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Jamestown Seventy

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by James F. Blumstein and
James Phelan

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The authors wish to express their appreciation to Miss Andree S. Kahn for her highly skilled, tireless editorial assistance.

Messrs. Blumstein and Phelan propose political migration to a single state for the purpose of gaining political control and then establishing a living laboratory for experimentation. They outline some of the problems facing the country and point to three historical bases for their idea: the importance of the frontier in American history and its disappearance; the traditional preference for local control in a de-centralized system of federalism; and the recognition that the successful communication of ideas is a cornerstone of democracy, as reflected in the First Amendment. They then outline some of the many problems that would arise in any attempt to implement their proposal.

This Is What We Are About

Today, the United States faces nearly insurmountable problems that present structures, institutions and philosophies do not seem able to correct. We find starvation amidst plenty, deeply entrenched racism, rampant technology that threatens man's very existence, alienation not only among more and more young people but also among blue-collar and white-collar workers, an educational system that is a failure, a military-industrial complex that is all-powerful and a gigantic bureaucratic government that can no longer be controlled by ordinary people. The short answer to all this—Revolution—is impossible when armed revolt by the citizenry-at-large would inevitably be put down by the military might at the disposal of those in control. We see the best way out in *rededicating* this nation to its heritage: re-opening the frontier, where alienated or “deviant” members of society can go to live by their new ideas; providing a living laboratory for social experiment through Radical Federalism; and restoring effective political communication in a multimedia society.

What we advocate is the migration of large numbers of people to a single state for the express purpose of effecting the peaceful political take-over of that state through the elective process. The goal of this takeover would be to establish a truly experimental society in which new solutions to today's problems could be tried, an experimental state which would serve as a new frontier and encourage imaginative local innova-

tion. Furthermore, if successful, it would, by its example, spur change in society as a whole. We shall discuss some, but by no means all, of the problems that might be encountered in such a venture: problems of migration and political take-over; economic viability; relations with the indigenous population; constraints imposed by the federal constitutional system.

Sporadic, small-scale migration is already a reality. Communes have been established in rural California, New Mexico, Colorado, Maryland, Virginia and Vermont. “Earth People's Park” envisions buying several hundred thousand acres of land in New Mexico and giving the land to people who wish to farm it organically. “Negative Entropy” has plans for moving into Vermont. In Virginia, “Twin Oaks”, a settlement based on B. F. Skinner's ideal society of *Walden Two*, is now operating. But there is a critical fault in all of these movements that dooms them, just as similar nineteenth-century efforts like Brook Farm and the communities of Fourier, Owen, the Shakers and the Rappites ultimately failed. Provisions for the institutionalization of continuing experiment and change in the community are lacking, as are ties to the larger society. Both are necessary in bringing change to that society and in preventing the choking and death of the experiment. Efforts of today also suffer from a serious lack of creative planning geared toward ensuring their long-range existence.

Our objective in writing this is modest. We do not attempt to explicitly set out the various experiments that could or should be carried out in the Experimental State. It is not our purpose to draw the blueprint for the future society; rather, it is to show that the creation of a radical experimental state within the United States is both consistent with our past and is a viable solution to many problems of modern America.

The Woodstock Generation

The present ideological alienation of affluent, middle-class American youth who have rejected the dominant values, roles and institutions of society has been caused by the unquestioned exaltation of technological values over human values and corporate goals over human goals. Whether labeled “Alienated Youth”, “Hippies”, “Victims of the Generation Gap”, “Student Radicals”, or “Organic Farmers”, the dissatisfied members of the younger generation are trying to develop unique social structures and values. This new group of dissidents, a product of the corporate society itself, finds the traditional road map of upward mobility unsatisfactory.

Social progress in the United States has traditionally meant the rise from ethnic isolation into the middle class. For many of the immigrant groups, the struggle to gain access to the middle class served as a palliative, inhibiting the search for

alternative social patterns. There continue to be relatively large groups outside the middle class mainstream (Afro-Americans, Indian-Americans, Mexican-Americans, Puerto Rican-Americans and all other "hyphenated Americans"¹), but they too are questioning whether inclusion in "straight" society is the objective they ought to seek.

The recognition that the middle-class life itself may be an alienating experience poses serious problems for models traditionally used to explain patterns of social integration. The emphasis on conformity and predictability which underlies the modern technological age has produced a homogenized social structure which may prove too inflexible and too pervasive to allow significant diversity to remain unchallenged in its midst. But the presence of diversity and alienation in a society often serves to spur innovation. And unless a society produces effective political and social change, it is stagnant.

Without at least some men and women sufficiently alienated to challenge the established order, to decry its assumptions, to suggest remedies for its faults, and to agitate their less alienated fellows into sufficient dissatisfaction, no social innovation is possible . . . [T]he cultivation of and tolerance for alienation, at least in some individuals, is a prerequisite for any major social improvement.

....

*[However, social] effectiveness requires that personal alienation be coupled with social impact: that the outsider be able to communicate his discontented vision of his society . . .*²

Therefore, a society like ours that "systematically pushes its alienated toward private withdrawal thereby deprives itself of its own potential for self-renewal"³ and promotes cynicism rather than political and social change.⁴ If change is to occur, a radical critique of society which offers suggestions for reform and/or revolutionary change must be communicated. There must be an infusion of human-oriented values which hold out the hope of control and constructive use of technological innovation.⁵

There is an increasing incidence of deeply felt cynicism among concerned young people, resulting in both scorn for traditional politics and withdrawal from the dominant society. Today's alienated generation is attempting to live by ideals and lifestyles foreign to the larger culture, and thereby develop a New Consciousness.⁶ With this New Consciousness will come the understanding and perception needed to change the reality of present society.

Nevertheless, it is becoming apparent that significant change is being frustrated by institutional and personal resistance. In the seventeenth century, the colonization of North America served as the real, physical outlet for the ideas of the idealists and intellectuals. But today's alienated generation faces a dilemma: it has an ideology—the American Dream, the Spirit of Woodstock—but no place where it can act upon it.

A New Frontier

American history is replete with examples of the disenchanted setting out for new turf on which to work out their own lifestyles, unfettered by the static, older society. Numerous socialistic and communistic settlements were established on the outer edges of the American civilization. The Owen and Fourier movements of 1824 and 1842 spawned no fewer than forty-five such experimental communities.⁷ Several religious and spiritual communities, such as the Shakers, the Dunkers and the Amish, found resting places here. The Mormons established themselves in Deseret, and their community became the state of Utah. Dissatisfied with their conditions, thousands of people broke with their past to migrate to unfamiliar lands during the great westward movement of the nineteenth century. There, they established a society scornful of the older society, impatient with old ideas, lessons and restraints.

The expanding frontier represented a continual social evolution and had an important place in the social development of the country. Frederick Jackson Turner has stated this thesis most strongly:

*American social development has been continually beginning over again on the frontier. This perennial rebirth, this fluidity of American life, this expansion westward with its new opportunities, its continuous touch with the simplicity of primitive society, furnish the forces dominating American character.*⁸

But with the closing of the frontier such escape routes to change and innovation were cut off. The "safety valve" which the frontier had provided ceased to be available. Since, at the same time, expanding industrialization placed restrictions on vertical and horizontal mobility, the growth of revolutionary movements within society was inevitable. The fierce, bitter Populist movement, the cry of Free Silver, the Coxey "armies", the growth of the American labor movement and the radical International Workers of the World, violent strikes such as those at Homestead and Pullman, and small, unsuccessful activities like the Haymarket Riot all had revolutionary components.

Unlike earlier malcontents, the dissidents of industrial America have had no place to go that offered any real chance for a new start, and they have thus been forced to remain within the social structure against which they had rebelled. Their short-lived threats left an indelible impression on middle-class attitudes which had become dominant. The tradition of radical social experiment—prevalent in this country prior to the entrenchment of the Industrial Revolution and the closing of the frontier "safety valve"—was abandoned. Indeed, the term "radical" has come to have pejorative connotations in many sectors of society. The victorious middle-class has sought to preserve the economic gains of industrialization, and this has meant uniformity, standardization, predictability, conformity and materialism. The history of the twentieth century, with its pattern of limited innovation followed by stern reaction, illustrates the inability of society to meet progress with equanimity.

Therefore, a new frontier is needed where the New Consciousness can flourish. The Spirit of Woodstock

(the liberation of self, the belief in the absolute worth of every human being, the sense of community and love) is the "essence of the American Dream—the age-old human dream."⁹ This revolutionary ideology needs a place to develop and thrive. But there is no room for it to be tested and nurtured within the physical, social, political and cultural confines of "straight" society. The old frontier had always been an alternative during the various stages, successful and unsuccessful, of the American experiment. Now a new frontier must be found to foster further experimentation, an environment relatively unpolluted by conventional patterns of social and political organization. Experimentation with drugs, sex, individual lifestyles or radical rhetoric and action within the larger society is an insufficient alternative. Total experimentation is necessary. New ideas and values must be taken out of heads and transformed into reality.

Radical Federalism

The Experimental State would revitalize the experiment in federalism embodied in the United States Constitution. A brief look at history will show that early American settlements were experimental in design and served as outlets for European ideals and ideologies. Not only was the idea of a written constitution previously untried, but also the structure agreed upon was very much an experiment in limited central government. Since ratification of the Constitution, there has been an erosion of the power of the states. We shall examine three factors which have led to this distortion of the original balance in federal-state relations. Our conclusion is that this distortion lends support to the creation of a state dedicated to experimentation. A new kind of federalism—Radical Federalism—must be tried so that the states can be restored as laboratories of experimentation.

The American heritage is one of dissent and experimentation. The earliest settlers came to escape religious and political repression in Europe. After Jamestown, the first permanent English community, was founded in 1607, many others

followed suit. These early settlements, however, were not static. Dissidents from existing colonies were quick to break away to form new political units when specific grievances were not dealt with to their satisfaction. Those inhibited by the norms of one community sought to set up their own, thereby establishing the tradition of local autonomy. It is this diversity which we would like to re-establish.

The Pilgrims and Puritans in New England and the Quakers in Pennsylvania were given more than an escape from the jails of England. They were given the opportunity to experiment, to test their beliefs in government. The experiment was in applied theology; the experiment was in government by pacifists; the experiment was successful; the experiment was disastrous. The period of colonization represented the reality of social experimentation for European ideas and idealists.

After the Revolutionary War, the autonomous colonies agreed to come together to form a united state. The Constitution, upon which this federation was founded, reflects the compromise between the goals of union and autonomy. Local control of internal affairs, it was thought, would encourage local experimentation and foster bold, diverse solutions to social and political problems. While the individual states were willing to give up certain powers—for example, the right to coin money and the right to conduct foreign relations—they jealously preserved important elements of sovereignty. The very structure of the legislative branch, especially the Senate, illustrates the importance of each state's semi-autonomous status. The federal government was thus conceived as one of limited, enumerated powers. The Bill of Rights, the acceptance of which was a pre-condition of ratification for many of the colonies, re-affirmed the restrictions on federal power. The Ninth Amendment made it clear that the people retained rights against government, even if not specifically enumerated in the Constitution and the Bill of Rights. The Tenth Amendment enshrined the states and the people as the ultimate sources of authority: "The powers not delegated

to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Constitution was a radically new experiment. It ensured social and political evolution to meet the changing needs and wishes of the people. Its federalist structure recognized the importance of encouraging, or at least tolerating, sundry local solutions to local problems. The genius of federalism is its understanding that local control and participation are important elements in governance.

Unfortunately, the invitation to engage in creative innovation was not accepted by many states, and the power of the states has declined strikingly over the last hundred years. There have been at least three major elements in the growth of the federal government's power vis-a-vis the states: the development of a national market and the pressure for uniformity and standardization which accompanied industrialization; the abuse of power by states in suppressing unpopular political and racial minorities and in instituting political and civil disabilities against them; and the growth of federal revenue-generating capacity through the enactment of the Sixteenth Amendment, which permitted the federal government to collect income taxes without apportionment among the states.

The tenure of John Marshall, an avowed Federalist, as Chief Justice facilitated the expansion of national control over commerce. The rapid economic expansion after the Civil War exerted even greater pressure for conformity and standardization. The federal judiciary responded by using the Due Process Clause as a substantive check on experimentation by local legislatures.¹⁰ By attempting to develop and impose a unifying ideology, the Court suppressed ideological diversity and stifled local experiments in government. The courts failed to understand that their "ideology, whatever its internal logic, conflicted with ideals that it purported to absorb."¹¹ The national commitment to economic development generated pressures for providing the nation's producers with an integrated national market. The national

economy needed federal, as opposed to random state, economic regulation. National regulation guarded not only against haphazardness but also against local attempts at radical experimentation. In one view, even the Progressive Movement, far from being the neutral, if not humane, shield between the people and the robber barons,¹² was a "defense of business against the democratic ferment that was nascent in the states."¹³

The modern corporation has an even greater need to increase homogeneity and conformity because predictability is the cornerstone of planning for the "Technostructure"—John Kenneth Galbraith's term for modern corporate management.¹⁴ Improved modes of transportation and the development of sophisticated communications media have facilitated the homogenization of America. Uniform state legislation and the federal alphabet agencies have also played a part in diminishing local diversity. The "Corporate State"¹⁵ has substituted for experimentalism the values of stability, conformity, minimization of conflict, standardization, centralization, hyper-rationality and unchecked, directionless technological innovation.¹⁶

At least two other parallel historical developments contributed to the decline of state autonomy within the federal system. The abuse of power by the states in discriminating against permanent political and racial minorities brought increased federal protection of individual liberties. The Fourteenth Amendment extended the fundamental guarantees of the Bill of Rights to the states. The federal judiciary has become increasingly sensitive to the rights of individuals and has moved vigorously to establish federal constitutional standards. And it is altogether fitting for the federal judiciary to strictly safeguard fundamental human rights against encroachment by any state even in the name of experimentation. This restraint on state power is a salutary development in state-federal relations; it should mitigate any feared excesses in experimental zeal.

The last centralizing element we shall mention is the growth of the federal income tax as a source of

revenue. While the progressive income tax has provided increasingly more tax revenue as incomes have risen, state tax sources have not expanded as rapidly. Thus, state revenues have not kept pace with the increased need for services, and the states have been faced with tight budgetary situations. As we discuss later, income generation may prove to be a problem in making an experimental state viable. In no way does it cut against creation of such a state, however. Rather, it supports the need for innovation in generating revenue and providing services.

The last thirty years have taught us that centralizing the solution of all problems is not a panacea for social ills. There is a widespread feeling in the country today that government must be returned to the people; this means more state and local control. The proposed federal tax-sharing plan reflects the belief that the states must be relied on more and more for innovative problem-solving. As federal Court of Appeals Judge Griffin Bell notes, our federalism must be "refurbished and revitalized:

*There must be diversity within unity. This will insure the solution of social, economic, and political problems, varying as they will in the expanse of a nation with large geographical area and indigenous problems. Such a system should allow for many beliefs, many initiatives, much inventiveness and leadership.*¹⁷

Oliver Wendell Holmes, too, recognized the importance of making "... social experiments that an important part of the community desires, in the insulated chambers afforded by the several States, even though the experiments may seem futile or even noxious to me and those whose judgment I most respect."¹⁸

We face a dilemma. On the one hand, we find that "state government is inefficient and out-of-date . . . [W]e have learned from experience that the states have not been able to serve our modern needs."¹⁹ On the other hand, the federal government's solutions have led to alienation and resentment. Moreover, the cost of error and inefficiency on a national scale is frightful.

In what direction does a way out of this paradox lie? Radical Federalism, a reaffirmation of the role of significant state and local experimentation, offers one very attractive answer. Re-establishment of the importance of the states will nurture risk-taking in political and social design, and is most appropriate in light of American history.

Within the context of Radical Federalism, one state, expressly committed to social innovation, should serve as a vanguard for experimentation and a model for the change of consciousness. It is this role, consistent with our historical preference for local control, which we foresee for the new state.

Political Expression, Communication and Purposive Action

It has long been acknowledged that the effective communication of ideas is an essential ingredient in the maintenance and growth of a democratic form of government. The First Amendment's protection of free expression is a recognition of the importance of safeguarding open discussion and debate in the marketplace of ideas. Presumably, better ideas will prevail, and people will change their minds if convinced to do so by good arguments. Although Constitutional protection afforded by the First Amendment is limited, this should not restrict the encouragement by society of even more effective methods of improving understanding through communications. The First Amendment as a legal principle necessarily has limitations; but in political terms it means that the effective communication of ideas is a positive good and that the expression of diverse ideas should be encouraged. In this way, conflict can be channelled into the political forum, thereby avoiding other forms of conflict. Feedback of information about the past and present functioning of a political system and about the rest of the world is essential for a society or community to function in a non-stagnating way.

Before anyone can be convinced of the value of a proposition, he must

not only receive the message but also must understand it. Because in our technological society some methods of communication are more effective than others, the means of transmitting ideas may be as important as the content of the communication. New forms of media have altered our way of perceiving things so that oral and written messages may no longer be the best modes of communicating.²⁰ The need to be heard and understood has led to a search for new means of effective expression. Recent examples of this search are the wearing of arm bands by school children in protest against the Vietnam War;²¹ draft-card burning;²² flag-burning.²³ As these incidents illustrate, symbolic conduct has become a felt necessity for the communication of ideas.²⁴ Symbolic conduct may in some contexts perform the function that eloquent oratory or fancy prose does in others.

*Symbolic conduct is an exceptionally vivid means of communication. It is more intensely emotional than the spoken or written word or the traditional cool art forms. Its dramatic effect is a substitute for the protester's lack of access to the more traditional mass media . . . The same voice of a draft-card burner would be lost in obscurity if its only outlet were mimeographed pamphlets.*²⁵

The resort to more action-oriented symbols and the growth in the size of demonstrations indicate that even the symbolic conduct mode is beginning to lose some of its vitality. The creation of the Experimental State and implementation of its revolutionary program could be the next step in creating a more effective method of communication.

It has been observed that "speech is a cool medium of low definition, because so little is given and so much has to be filled in by the listener."²⁶ For communication to be effective, the messages transmitted must contain information. In communications theory, "information" has not only the material reality of an event as such, but also is the patterned relationship between events. People will better be able to grasp the meaning of the radical critique by

experiencing the reality of it as a concrete, living program. The Experimental State will permit dissidents to move beyond the modes of speech and symbolic conduct to a form of communication providing greater political information—what we call Purposive Action.²⁷ By filling the observer with more data, leaving less information for him to supply, the experimenters will be able to improve communication by increasing his understanding. With the institutionalization of an experimental way of life, people will have an opportunity to communicate politically by example rather than through mere advocacy; and the society, which is incapable of learning without experiential inputs, will receive a greater diversity of information to aid democratic social change. Karl Deutsch notes that ideas alone will not provide the solutions to new problems. New ideas, to be effective within a society, must be accepted by some group with power in the society, a group that does not include the persons originally advocating, or agitating for, change.²⁸ In order to communicate their ideas, dissident innovators must transform their ideas into real, concrete Purposive Action. Since, according to Deutsch, the dissident advocates of new ideas will usually not be the ones who actually implement the change in society, they should remain sufficiently outside the society to act, but close enough to influence it by communication of information. A successful experiment can convince a power group in society that an idea is worthwhile and viable. Purposive Action is, therefore, a potentially important part of the political process, a means of effectuating social change.

Not only will the Experimental State provide an environment where people can live by their ideals in an atmosphere of constant social ferment, but it will also have an impact on the consciousness of non-experimenters. By their actions, the pioneers will be better able to communicate their ideas—their critique of society—to others through concrete programs of change. The political values which

underlie the First Amendment will be served by Purposive Action as embodied in the Experimental State and its program. Society at large as well as participants in the experiment will benefit.

Migration: The Logistics

There are ten states whose population is less than 700,000.²⁹ Because gaining political hegemony over a state is a prerequisite for the success of this experiment, and because this must be achieved by mass migration, it would be best to choose one of these as the target state.

How and where could enough people be found to make the necessary migration plan politically feasible?

Government coercion is one answer, but one which would clearly violate the rationale of the experimental design. Forced participants would not be dedicated experimentalists. If the government were to adopt the idea of an experimental state, there is a danger that it might view this as an opportunity to forcibly rid society of all malcontents wholesale. The re-location of the Japanese during World War II, though upheld by the Supreme Court,³⁰ is an ugly reminder of the evil of forced mass migration. Nothing said here should ever be construed as a justification for government coercion in making people move to a certain area, or for an official policy of "love it or leave it".

Voluntary mass migrations have occurred in the past when there has been a motivating force strong enough to overcome geographical inertia. It is possible that some administration might find the proposal for an experimental state attractive enough to offer inducements to migrate. Examples of government-sponsored migration are not difficult to find. In the middle of the American Civil War, Congress passed the Homestead Act which set up a land give-away program for those who settled on and worked acreage in the western territories. The Homestead Act is still an open invitation to settlers to move to Alaska and stake out a claim.³¹ Government policy also aided migration into the

United States until the first of the restrictive immigration laws was enacted in the 1920's. Examples of government-sponsored migration can similarly be found in other countries. One of the major policies of the Krushchev regime in the Soviet Union was the settlement and development of the vast, unused stretches of Siberia.

There is no reason to believe that government-sponsored migration, with the proper incentives, could not be successful. The real issue seems to be the likelihood of official government encouragement of an undertaking of this kind. Even if the unlikely prospect of government help should present itself, an important question must be raised: whether and to what extent would such aid be an adulterating, dependency-creating element in the evolution of the living laboratory. Perhaps some kind of help could be accepted without endangering the experiment, but past experience with governmental aid programs augurs caution. It is not likely that the federal government would philanthropically provide aid to potential migrants without exacting something from them in return. Uncle Sam's aid to foreign governments is tied to purchases of higher priced American goods; his military scholarships are tied to subsequent military service; his welfare payments are recoverable if the future income of one-time welfare recipients rises above the poverty level. Dependency on the government can only serve to undercut the objective of revolutionary experimentation. As we shall discuss below, the constraints of the federal structure of constitutional and statutory law already serve as outer boundaries of the social laboratory; additional governmental controls and dependencies are potential threats to the openness required in an experimental setting.

What motivation, then, outside of government support, would induce people to migrate to a state selected as a laboratory community? Economic welfare has been an incentive for mass migration in this country and in less developed countries throughout the world. A good example is the mass migration off the farm and into the cities. This migration has transformed the United States from a predominantly rural, agricultural country to a

heavily urban nation in a relatively short time period. Increased mechanization and the concomitant increase in agricultural productivity have led to migration to the cities by those in search of lucrative employment and a better life.

But, as we have seen, much of the migration to (and within) the United States has been for ideological as well as economic reasons. The combination of racial oppression in the South and the hope of more freedom and prosperity in the North and West have spurred masses of black people to migrate since World War II.³² Religious persecution and political repression also have been sufficient motivation for migration. It is, then, realistic to believe that ideological commitment and the pioneering spirit could substitute for the incentive of economic gain.

The massive marches on Washington of 1963, 1967 and 1969, and the huge turnout at the 1969 Woodstock Music Festival on Max Yasgur's dairy farm in Bethel, New York, are illustrations of the mobility of many people, young and not so young alike. To be sure, the temporary mobility which a music festival or a political rally requires is of a different order from that of a permanent (or at least more than a transient) re-settlement. Nevertheless, given a time perspective of perhaps ten years (though the time could be considerably shorter), it is entirely possible that enough disenchanted, idealistic, adventurous and creative people would accept the challenge of re-settling in a single "frontier" state, especially once the word was out that a movement was on.

If the government does not subsidize the creation of the new state, the costs of mass movement of people might prove an important barrier at the outset. One mitigating consideration is the fact that travel costs within the United States are not very burdensome. For those with automobiles,³³ even cross-continental travel is not overly taxing in terms of expense or time.³⁴ Similarly, public transportation and group charters offer relatively inexpensive modes of transportation. Moreover, once political control is achieved, travel

grants could be established to encourage new immigrants and thus maintain experimentalism. But defraying the initial travel expenses remains a thorny issue unless we assume, as one must, that the chance to live in an atmosphere of social experimentation will serve the same function that the prospect of economic gain has for the more traditionally motivated migrant.

The major cost of moving—other than the cost of re-settlement—would be transporting household goods for those who had accumulated substantial belongings. A family which would have accrued enough to make this a problem, however, is very likely not one for which the cost of moving would be a realistic deterrent.

Resettlement and Expansion: The Economics

Mass migration into a relatively concentrated area in a brief time period will result in acute shortages. Most importantly, there will be a need for resources to help defray costs of food and shelter. Of course, in the short run, many of the settlers will have some assets with which to procure food, but bottlenecks inevitably will arise in the supply of housing and in the distribution of other vital services. It is unlikely that the state will offer any help in meeting these problems if it feels threatened by the newcomers. Consequently, some independent means of support must be found to cover the cost of re-location, even though local and national welfare programs might provide some migrants with a subsistence living; when local communities are won over politically, perhaps some subsidy from their general coffers would be made available to help the later settlers.

The cost of providing food and shelter might serve as a limiting factor in the selection of a state. In a warm-weather site, the cost of such items as heat and clothing would be substantially less. A state which is not isolated from the United States food supply would also prove less costly if, at least at the outset, food were not entirely home-grown but had to be purchased in the market. The need for construction of houses, libraries, waste disposal units and other such physical

capital infrastructure might serve as an upper bound on the pace of in-migration. However, should current residents move out of the state in response to the in-migration, the physical problem of caring for the influx of pioneers would be somewhat alleviated.

But beyond the immediate provision of basic necessities, the problem of furnishing other public services will arise once the migrants establish themselves in various localities. Such functions as health, sanitation, fire, communication, transportation, utilities, education and security must all be accounted for in some manner regardless of whether migrants choose to establish new communities or settle in already existing communities. New forms of community organization may reduce the need for government provision of these kinds of services. There are historical examples where community cooperation has been able to replace in kind many of the so-called "government services" now bought on the open market with tax dollars. The Israeli *kibbutz*, for instance, seems to have eliminated the use of money both as a medium of exchange and a means of storing wealth. The *kibbutzim* are relatively small communities with a high degree of ideological commitment; the spirit of selfless labor for the communal welfare is not so easily extended to a larger community. But an encouraging element of the *kibbutz* experience is that the *kibbutzim* have formed a federation, and people in the more successful communities willingly provide labor services for the newer, struggling ones. If such a level of commitment could be instilled in the experimental community, progress could be made toward a non-market solution to the problem of providing community services.

Movement away from a market-oriented economy is not without problems, however. Providing services, even in-kind, requires the use of resources. The market serves a useful purpose, when functioning properly, in that it helps society allocate its resources in an optimal, efficient manner. The movement to a communal in-kind system of serving in the

public interest raises the question of how the community should allocate its in-kind resources. How can people be made to reveal their preferences without putting a price tag on them? Perhaps the political model can be substituted for the economic model. Currently, decisions on government expenditures are governed by the political process in which people's preferences are revealed by votes, public opinion surveys, etc. If people express their choices accurately when tax dollars are involved, they will likewise do so when in-kind service is involved.

Even if most of government's traditional service obligations could be met through community participation on a non-market basis, the problem of how to deal with requirements for capital expenditures would still exist: for instance, how to finance the purchase of a non-polluting incinerator, the construction of a school, etc. A look at the education problem illustrates the need for the community to generate some kind of economic surplus. A reasonable assumption about those most likely to settle in the Experimental State is that they will be quite young. In a short while, there may be a rapid increase in the number of school-age children. Whenever the ratio of consumers of formal education to those providing the resources for the educational output is high, the burden on each adult (i.e., non-consumer of education) becomes greater. Of course, the new community may decide to transform the traditional educational system, reducing the need for massive investment in physical facilities. Or perhaps the community will prefer to treat education as a freely marketable good, as foreseen by Milton Friedman. Under that system, everyone would be free to buy as much education as he chose, and the establishment of a formal, government-sponsored educational system would not be necessary.³⁵ Or perhaps the community would prefer the system advocated by Ivan Illich, of equally distributed educational credit, used in any way and at any time an individual wants. Regardless of which system is adopted, the problem of providing resources remains. To the extent that

physical capital is required (for education as well as any other public service), or to the extent that the experimental community needs to make use of goods and services not produced inside the state, the barter system of community cooperation will not suffice. If the Experimental State is to have economic relations with the other states, it must have the resources available to do business.

The acknowledgment of the potential need for economic relations with other states adds a limitation to the scope of the state's experimentation in the area of commercial law. Unsatisfactory commercial protection would dissuade outsiders from dealing with people in the Experimental State, making interstate trade more difficult and making it difficult and costly for the state to borrow money.

If the Experimental State expects to purchase goods from other states, it must have some means of paying for them. Thus, the state must engage in some form of production, if only to pay for its external purchases. What kinds of things could be produced in the new state to furnish income? Many, no doubt, will emphasize the agricultural sector, hoping to export various farm goods. If there is a high level of education among some of the pioneers, a very mobile and profitable business is that of consulting. Clearly, some income could be derived from this source. But unless other work activity were found, the society might turn into another elitist culture. Perhaps labor-intensive, light manufacturing could be an area in which the Experimental State would have a "comparative advantage" if, by its barter exchange economy, it could keep its cost of living down. The production of consciousness-changing children's books, toys and games might be another source of revenue.³⁶

The decision to maintain some form of industry raises several weighty questions. First, what control should the community have over the kind of output produced? It is clear that certain goods might have an impact on values adverse to that which the community desires. For example, if toy production is used as a source of revenue, the community may find its broad objectives foiled by the

and upheld, the voting age ruse obviously would no longer pose any problem.

A state might also adopt intra-legislature procedure designed to achieve minority control, or at least block change.⁴⁹ For example, if take-over appeared near, the legislature might require that new legislation be passed by a 2/3 majority. Or it could set up procedural rules to assure control to those who have seniority—presumably the representatives with indigenous constituencies. Or the state could eliminate districting altogether if it believed it to be politically expedient. Under one man, one vote doctrine, there is no requirement, as the law now stands, that the state have a districted system of representation. If the old-liners could maintain a solid coalition and impose obstacles to the franchise on the newcomers, such a scheme would make it significantly more difficult to gain political control.

The Supreme Court has not squarely dealt with the problem of gerrymandering. If constitutionally permissible, the old-fashioned political gerrymander might present another obstacle to political control.⁵⁰

Another ploy might pose problems for the pioneers. The state could designate certain important political offices as non-elective. While the Court has moved to protect the franchise where granted, it has yet to articulate any criteria as to when the elective process is constitutionally compelled. On this theory, the Court has upheld the selection of Georgia Governor Lester Maddox by the state legislature, even though he came in second in the popular election, a three-man fight.⁵¹ The Court's theory was that there was nothing in the Constitution which barred a state from selecting its governor in any manner it chose; the selection by the legislature was deemed an alternative process, and thus the majority-rule principle, applicable only to elections, was not violated. Similarly, the Court held the one man, one vote rule inapplicable to a county school-board election on the grounds that the board performed an administrative function and the representatives of each local board were appointed by the members of the local board, not elected by the people of the local districts.⁵² The local

members were elected, but there was no requirement that representation in the county be dependent on the population of the local districts. Thus, the local population might try to remove election of the governor from popular control, have him designated by the legislature and, through gerrymandering, frustrate the popular will.

Finally, the incumbent political group could make it difficult for the pioneers to institutionalize change through state constitutional mandate by making the amending procedure so cumbersome that amendment would be virtually impossible.

The short response to this kind of harassment is the migration of more people. If gerrymandering, voting restrictions, etc., pose a problem for a marginal majority, they surely do not pose the same types of problems for a massive majority. If the commitment to experiment can be maintained over time in the face of these dilatory tactics, the resulting delays should be no more than thorns in the side of the nascent movement.

Other opposition could come in a more *ad hoc* form. Local officials could impose hardship, for example, by denying driver's licenses or permits for various types of businesses and other establishments to be set up by the pioneers. Lawyer-pioneers could be denied admission to the Bar and doctor-pioneers denied licenses to practice medicine. Arbitrary public health regulations could be adopted, or existing regulations could be strictly enforced to harass communes. Local schools could set up very stringent dress requirements and make attendance compulsory. Social pressures could also make life difficult if the settlers were dependent on the local residents. For example, suppose the local doctor refused to treat any of the newcomers; or the druggist refused to sell them any medication. Or suppose some of the settlers sought to support themselves in the interregnum by working in a local factory or for a local corporation and were denied the opportunity to do so. Ultimately, such measures could dissuade settlers from remaining in the Experimental State.

As disconcerting as these forms of harassment might be, the most serious would be violent resistance. Examples of this reaction to threatening situations is all too common in American history. The southern lynch mobs and the more formal Ku Klux Klan of the Reconstruction Period, the 1920's and the present offer sobering illustrations of extreme, visceral responses to threatening situations. The local community reactions to outside civil rights "agitators" during the history of the civil rights movement and during the current school desegregation battles in the South are other instances of physical intimidation and violence aimed at a perceived outside threat. Most recently, a group of Alabama whites, with the outspoken sympathy of a local Baptist minister, poisoned and shot seventy-five cows on a farm operated by Black Muslims, because they unjustifiably and incorrectly feared the establishment of a Black Muslim nation in their county.

An appropriate illustration of armed conflict over political control of a state is the struggle for Kansas in the 1850's. In 1854, Senator Stephen Douglas won acceptance for his doctrine of popular sovereignty. His Kansas-Nebraska Bill left the decision of whether the new territories would enter the Union as slave or free states up to the settlers of the territory. This was an open invitation to the conflicting forces to inundate the state with settlers sympathetic to the respective sides. The result is now commonly called "Bleeding Kansas" in history texts.⁵³ The New England Emigrant Aid Society, an abolitionist group headquartered in Boston, is reported to have sent 1,240 migrants to Kansas in furtherance of its anti-slavery objectives. Similarly, southern and border states encouraged men to settle in Kansas for the purpose of gaining a pro-slavery majority. In the election of 1855 for territorial legislature, several thousand "border ruffians" crossed into Kansas from Missouri to stuff the ballot boxes on behalf of the pro-slavery slate. The territorial governor sought to void the election, but President Pierce overruled him and upheld its validity, even though there were 6,000 votes cast with a registration of only 2,000.

The fraudulently elected legislature proceeded to enact a draconian slave code; for example, it provided the death penalty for aiding a fugitive slave.

In 1855 the free-soilers held a meeting in Topeka in response to the fraudulent election and drew up their own constitution. In 1856, they elected their own legislature and governor. Thus, there were two competing governments claiming legitimacy. In May, 1856, a group of pro-slavery forces raided the settlement of free-soilers at Lawrence, Kansas, destroying homes and burning down the office of the free-soil newspaper. John Brown (of later fame at Harper's Ferry) and fifteen followers retaliated by raiding a village near Pottawotamie, Kansas, hacking to death five men who had had no connection with the "Sack of Lawrence". This led to an undeclared guerilla war which was to claim several hundred lives.

The reason for such a detailed description of the situation in Kansas is that it is evidence of what can happen when strong ideological opponents seek to gain political control of the same geographical unit. Planning for the migration must include steps to avoid this sort of extreme episode. In Kansas, some evidence indicates that there was federal complicity with the pro-slavery forces who destroyed Lawrence.⁵⁴ If such a posture were taken by the federal government toward the Experimental State, the prospects for violence would increase and consideration of self-defense might have to play a greater role in planning. Needless to say, part of the advance planning must involve improving relations with those people who already live in the state.⁵⁵

The attitude adopted toward the local residents will reveal a great deal about the ideology of the movement. The question is whether a political unit can survive with two potentially hostile factions vying for power. Can pluralism remain viable within the context of a radical social experiment, in which basic values, lifestyles and political objectives differ?

Assuming that the problem of political control is overcome, the members of the experimental

community still will be faced with a hostile minority faction. If the experimental community should become politically fractionalized, the presence of a large group of potential counter-revolutionaries would pose a grave threat to the experimental design.

The first great test of the experimental program will be the safeguarding of the rights of this potentially dangerous minority, while assuring, through the political process, that a lasting commitment is made to the state's experimental purpose. On theoretical grounds, it would appear preferable to seek a solution to this problem by encouraging the residents to stay and confront the issues of coexistence directly. Since one of the ultimate goals of the experiment is to change the consciousness of America, attempts should be made to "change the heads" of non-experimenters. A willingness to make accommodations should be manifested during the earliest stages of re-settlement, in order to avoid potential conflict.⁵⁶ For those who wish to leave, the state might provide travel grants to minimize undue financial sacrifice. Just as it is important to reach a *modus vivendi* with those who choose to remain, it is also important to provide a *modus operandi* so that those who want to leave would not be hindered by financial considerations. Perhaps the state ought to compensate them (at fair market value) for physical assets they might want to sell since the community's new design may have reduced the marketability of the property. This would also serve to weed out those who are uncommitted to experimentalism.⁵⁷

Given the likelihood of, at best, strained relations between residents and pioneers, and given the problems that will inevitably follow political take-over, the group organizing the migration must make a major policy decision even before re-settlement can begin: should a specific program for political take-over and preliminary restructuring be adopted? The alternative would be development through a spontaneous, organic process. There are good reasons backing either solution. It might be felt that a prior plan would be elitist in that the members of the community

would not be taking part in the development of the experimental design. Also, such a plan could limit the diversity of the new community because of the narrowness of its appeal. Clearly, if a detailed outline deterred significant numbers of potential migrants, this could lead to failure of the new state. Since people are more likely to accept something over which they feel they have some control, a prior road map should, if it exists, be open to alteration once control of the political machinery has been gained.

If no formal plan is promulgated, the community would seek unity on a single objective—political control of the state. But even this objective might prove illusory and elusive if there were no guidelines. There is a very real danger of significant fragmentation among the settlers. The migrating group may be wholeheartedly in favor of experimentation, but there is no reason to believe that it will be unanimous in its opinions on specific experimental designs. While such diversity may well serve the goals of experimentalism within a pluralistic community, it makes the initial task of setting up the experimental framework more difficult. Internecine discord might choke the sense of unity, identity and commitment necessary for the success of the new state. Moreover, organic development of a program would allow the indigenous residents to wield influence beyond their numbers. If the new majority becomes involved in fragmented political bickering, the traditionalists might maintain the balance of power. This possibility is not fanciful. Revolutionary groups (in the United States and elsewhere) have had a history of declaring war on their closest ideological ally, joining with reactionary elements, if need be, to undercut their competitors. Such a pattern in the early stages of the political struggle might torpedo any chance for hegemony.

Consequently, the cost of imposing a prior interim plan, in terms of anti-democratic values, might well be worth the gain, in terms of guaranteeing the success of the initial political take-over. Recruiting migrants on the basis of a definite proposal

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would offer some degree of notice to prospective settlers, and if the reasons for an advance plan were explained and its temporary and flexible nature assured, the likelihood of resentment would be reduced. With a broad strategy outlined, the settlers would have a unifying focus in the early stages of the battle for political control. Although the long-range principle must be that of continual social experiment, the choice between a specific or very hazy proposal must be related to the need for commitment and unity in the initial stages of political take-over.

Another question of strategy in formulating a program is the pace of experimentation to which the community should be committed. Since one objective of the state is to alter existing institutions by acting as a model for the rest of the country, the most realistic approach may be to proceed slowly. This is especially true since the United States is unlikely to undergo revolutionary changes quickly. A more optimistic position is that sweeping re-design of the social system, if successful, might lead the rest of the country to follow suit without going through intermediate phases. The new community would be spared half-hearted reform measures—themselves part of the present social problem—which would stifle the imagination and creativity of the members of the living laboratory. Obviously, this type of decision must be made by the participants in the program. Any prior plan should be so constructed that this major policy decision would not be finally determined until political control is won.

The Community in the Federal Context

One of the major limitations on experimentation is the place of the state within the federal system. The Constitution would serve as a guarantee of basic human rights so that the state, in its experimentation, could not trespass on fundamental liberties. This is an important limitation, and its impact is positive rather than negative. The recognition that constitutional safeguards must be ensured will reduce the kinds of excesses to which revolutionary communities may be prone.

There are, though, less salutary limits which the federal system imposes on the states. The trend toward increasing uniformity and diminishing tolerance of deviance poses a severe threat to many areas of experimentation. Professor Alexander Bickel has argued that some of the most hallowed decisions of the Warren Court have become irrelevant, and perhaps even harmful, because they stifle local social experimentation.⁵⁸ The one man, one vote area illustrates this potential threat.⁵⁹ Such sweeping constitutional requirements do limit the states' ability to experiment. In an era when the country is being drawn closer together through improved communications and transportation, the increased application of federal constitutional standards to local matters is perhaps understandable. Certainly, we do not argue for an across-the-board roll-back of the constitutional developments of the past 30 years. We simply hope that the Court will be receptive to genuinely experimental projects adopted by people committed to living a life of social experimentation.

There are other areas where the Constitution may limit experimentation. The negative implications of the Commerce Clause, for example, impose a limitation on state regulation. The Commerce Clause grants the Federal Government power to regulate interstate commerce, but through interpretation it has taken on an independent power. It has been held that the Commerce Clause, even without any Congressional action, bars state legislation inimical to national commerce.⁶⁰ And where Congress has

not acted, the Supreme Court has asserted that it, not the state legislature, is the final arbiter of the competing demands of state and national interests.⁶¹ As a very recent case indicates the Supreme Court balances the interests the state asserts with the interest it finds in the free flow of interstate commerce.⁶² Consequently, it is difficult to predict under what circumstances the Court would find that the state's interest in experimentation would justify the restrictions on commerce. Environmental control, product control and transportation regulation all would face potential challenges under this self-executing aspect of the Commerce Clause.

There is another way that state regulatory power is limited in the absence of affirmative action by Congress—the doctrine of pre-emption. When unable or unwilling to decide issues of state power, the Court has couched its restrictions on state regulation in terms of federal pre-emption.⁶³ Under this theory the federal government, even though it has not enacted any specifically conflicting legislation, is said to have “occupied the field”, thereby pre-empting state regulation. This approach, while cutting back on state power, has the virtue of leaving the constitutional issue of “power” undecided.

In addition to the self-executing element of the Commerce Clause and the pre-emption doctrine, there exists the problem of federal legislation which directly conflicts with local regulations. In the last thirty years, the Supreme Court has upheld sweeping legislation under the commerce power.⁶⁴ Indeed, since the era of Brandeis and Holmes, the very character of the federal government's power has changed. No longer is the federal government's authority limited to the specifically enumerated powers in the Constitution; it is now a government of general powers under the Commerce Clause, and federal legislation prevails unless in conflict with a supervening Constitutional provision. An unfriendly Congress could therefore pose a serious obstacle to sweeping economic regulations which the Experimental State might want to implement.

The trend of expanding federal power means that a hostile federal government would have many avenues by which to subvert the experimental objective.⁶⁵ Since 1937, the Court's tolerance of social experimentation has increased in conformity with the Holmes-Frankfurter theory of judicial deference to the legislative branch. Nevertheless, the Court's outlook has been national in scope, and the experimentation it has accepted most graciously has been that of the federal government. If the Experimental State is to thrive, it requires the Court's support. The Court must recognize the importance of re-establishing innovative state governments.⁶⁶

Institutionalizing Experimentation

The successful creation of the Experimental State does not assure its continuation over time. There must be some attempt to institutionalize the experimental design so that it does not fall prey to crippling, transient, reactionary movements or to internally generated rigor mortis. The problem is steering a course between the Scylla of excessive flexibility and the Charybdis of excessive rigidity.

In the Israeli *kibbutzim*, it has been recognized that lengthy tenure of office may lead to the development of a leadership caste or an entrenched bureaucracy. Consequently, the *kibbutz* limits tenure of office to three years. There are other ways of requiring constant review. For example, all legislation might lapse automatically if not re-enacted every ten years. Or courts composed of members of the community could be triers of both fact and law—arbitration boards where a specific law would not be an exclusive, definitive element in the decision. Or the role of the courts might be expanded to that of a revolutionary ombudsman⁶⁷ which would maintain the laboratory concept by constantly referring arguably out-moded laws back to the people for re-consideration.

Most important, however, is making sure that the experimental fervor be nurtured both through formal channels of education and through the conscious commitment of

the state as a whole. The history of the Israeli *kibbutzim* is helpful in putting the problem into perspective. The *kibbutzim* are semi-autonomous branches of the Israeli economy. They are organized on a model of extreme collectivism with communal kitchens, dining halls, laundry, child-care and child-rearing facilities. According to Spiro,⁶⁸ there were four prime motivations for the establishment of the early *kibbutzim* prior to Israeli independence in 1948: 1) to escape from anti-Semitism in Europe and elsewhere; 2) to re-constitute the Jewish State in Palestine; 3) to use physical labor (in agricultural production) because it was deemed the noblest means of self-expression; and 4) to establish a society of equality and freedom. The members of the *kibbutz* see themselves as the vanguard of man's quest for an ideal society. The ideology of the *kibbutz* is Marxist in orientation, and the members see their role as one of changing the consciousness and values of the rest of society in order to set up a truly communal state. Money has been abolished as a form of wealth and as a medium of exchange, and the profit incentive has been eliminated.⁶⁹

However, after Israel achieved independence the *kibbutzim* did not attract new, young members. Indeed, in the two years after independence, there was a high rate of defections: 9.7% in 1949, and 9% in 1950, compared to an average of 2–3% in prior years. Kanovsky has noted that,

*... revolutionary movements tend to become conservative with age. The kibbutz movement, which had played an increasingly important role prior to Israeli independence, looks with foreboding upon its declining position in Israel. The older collectives pin their hopes on the younger generation . . . However, the younger generation sees the kibbutz as a natural type of social order . . . a 'meshek' (an economy). If he decides to leave his meshek to live in a city or town, he considers this to be no different from a decision to choose one occupation than another, or to choose one place of residence in preference to another.*⁷⁰

If the state is to maintain its commitment to experimentalism, it must be conscious of the danger of hardening of the arteries now faced by the Israeli *kibbutz* movement.

Through a process of self-renewal, the new state must sustain a high level of ideological fervor. In addition, the community must assure itself of continuity by keeping its young in the state and/or by attracting a flow of new pioneers. Furthermore, institutionalization of the experimental motif will require structural as well as ideological steps. Successful political take-over is only the first in a series of intermediate goals along the path to the successful creation of a living laboratory.

1. See J. Higham, *Strangers in the Land* (1955).
2. K. Keniston, *The Uncommitted: Alienated Youth in American Society* 415 (1965). See also text accompanying n. 27 *infra*.
3. *Id.*, at 419.
4. See generally E. Erikson, *Identity: Youth and Crisis* 26–39, 256–60 (1968). Erikson sees the need for ideology as an antidote to the alienation caused by our rapidly changing technological society. He characterizes the society as being plagued by “chronic social change,” i.e., the unqualified, unrestrained acceptance of self-justifying technological and social innovation. Ideology, past and present, is not sufficient, however. We must move to a system of universal ethics built on ideology and superimposed on the technological civilization.
5. See generally W. Bennis and P. Slater, *The Temporary Society* (1968).
6. This term is used by Professor Charles Reich of the Yale Law School in his forthcoming book, tentatively entitled *The Greening of America*, a manuscript of which is available in the Yale Law Library. According to Reich, Consciousness, “is not a set of opinions, information, or values, but a total configuration in any given individual, making up his whole perception of reality.” *Id.* at I-17.
For Reich, Consciousness is at the root of what has gone wrong in this country, and the Consciousness of the new generation is the best way of improving the situation.
“Consciousness is the underlying factor that controls a society’s structure and its ability to respond to the need for change Consciousness I is the traditional American outlook of the farmer, small businessman, and worker trying to get ahead. Consciousness II represents the values of an organizational society. Consciousness III is the new generation.” *Id.* at I-19.
7. See J. Noyes, *History of American Socialisms* (1966).
8. F. Turner, *The Frontier in American History* 2–3 (1920).
9. C. Reich, *The Greening of America* (manuscript in Yale Law Library).
10. See A. Paul, *Conservative Crisis and the Rule of Law* 2 (1960).
11. J. Blum, *The Promise of America* 48–49 (1966).
12. G. Kolko, *The Triumph of Conservatism* 7–8 (1963).
13. *Id.*, at 6.
14. J. Galbraith, *The New Industrial State* (1967).
15. This is Reich’s term for the present organizational society.
16. See R. Presthus, *The Organizational Society* (1962).
17. Bell, *Federalism in Current Perspective*, 1 Ga. L. Rev. 586, 587 (1967).
18. Holmes as quoted in W. Mendelson, *Justices Black and Frankfurter: Conflict in the Court* 77 (1961).
19. W. Mendelson, *supra*, at 79.
20. M. McLuhan, *Understanding Media: The Extensions of Man* (1964).
21. *Tinker v. Des Moines Independent School District*, 393 U. S. 503 (1969).
22. *United States v. O’Brien*, 391 U. S. 367 (1968).
23. *Street v. New York*, 394 U. S. 576 (1969).
24. The courts have had difficulty defining areas of protected symbolic speech. The Experimental State would improve on the effectiveness of symbolic action as a mode of expression and would not pose the problem now faced by the courts in the First Amendment area of balancing the values of speech with the need of society for order. See generally Note, *Symbolic Conduct*, 68 Colum. L. Rev. 1091, 1105–26 (1968).
25. Note, *Symbolic Conduct*, 68 Colum. L. Rev. 1091 (1968).
26. M. McLuhan, *supra*, at 23.
27. Purposive Action is a unique form of communication. It contains two ends of equal strength and importance: the act which is intrinsically valuable and the idea which the action conveys. This differs from symbolic conduct, where the conduct itself is not an end, but rather the idea communicated by the conduct is the only purpose.
28. K. Deutsch, *The Nerves of Government* 128–46 (1963); see also n. 2, *supra* and accompanying text.
29. The following is a list of the 10 least populous states:
Source: New York Times Almanac (1970)

50– Alaska (241,000)	45– North Dakota (614,000)
49– Wyoming (311,000)	44– South Dakota (651,000)
48– Vermont (424,000)	43– Montana (686,000)
47– Nevada (439,000)	42– (tie)
46– Delaware (525,000)	Idaho (699,000)
	New Hampshire (699,000)
30. *Korematsu v. United States*, 323 U. S. 214 (1944).
31. *Cf.* New Communities Act of 1968, 42 U. S. C. § § 3901–3914.
32. See generally C. Brown, *Manchild in the Promised Land* (1965).
33. Whether automobiles will be permitted in the Experimental State must be decided by the political process once the state is set up, consistent with the Commerce Clause. But as a means of migration in the early stages, there seems no reason to exclude in-migration by car.
34. Driving for eight hours a day, one could make 450–500 miles per day. On the assumption that an average car gets 15 miles per gallon of gasoline, the trip across the continent would require 200 gallons of gas. At a cost of 35–40c per gallon, the 6–7 day trip would cost \$70–80 in gas. The cost of food would not be additional since people must eat whether they migrate or remain at home. The cost of eating in restaurants might be higher, but a family could presumably carry some food and equipment for cooking; food could be purchased in food stores en route rather than in restaurants or other culinary establishments. There are numerous camping facilities, so lodging cost would be negligible for those hardy enough to sleep outdoors.
35. Friedman, “The Role of Government in Education”, in R. Solo, *Economics and the Public Interest* 123–44 (1955).
36. See D. McClelland, *The Achieving Society* (1961).
37. See E. Mishan, *The Costs of Economic Growth* 45–106 (1967).
38. See C. Argyris, *Integrating the Individual and the Organization* (1964); C. Argyris, *Interpersonal Competence and Organizational Effectiveness* (1962).
39. If residents did not feel threatened, they might respond to the new situation with restraint. For example, the Woodstock Festival of August, 1969, had a very difficult time finding a place which would allow the festivities. Town after town refused to grant the organizers the required permits. The residents of Bethel, New York, ultimately the host town, were openly hostile at the start of the weekend. When acute food, water and sanitation shortages plus a medical crisis developed, however, many of the local people helped out, mellowed in part by the friendliness of the festival-goers. This is the kind of change of consciousness we spoke of earlier; hopefully it would flow to the indigenous populace as the Experimental State was being organized.
40. *Harper v. Virginia Bd. of Elections*, 383 U. S. 663 (1966).
41. *Carrington v. Rash*, 380 U. S. 89 (1965).
42. *Lassiter v. Northampton Bd. of Elections*, 360 U. S. 45 (1959).
43. *Kramer v. Union Free School Dist. No. 15*, 395 U. S. 621 (1969); *Cipriano v. City of Houma*, 395 U. S. 701 (1969).
44. See *Hall v. Beals*, 38 U. S. L. W. 4006 (U. S. Nov. 24, 1969); *cf.* *Drueding v. Devlin*, 234 F. Supp. 721 (D. Md. 1964), *aff’d per curiam* 380 U. S. 125 (1965).
45. *Shapiro v. Thompson*, 394 U. S. 618 (1969).
46. *Wyman v. Bowens*, 38 U. S. L. W. 3311 (U. S. Feb. 24, 1970).
47. *Hall v. Beals*, 38 U. S. L. W. 4006 (U. S. Nov. 24, 1969).

48. See A. Bickel, *The Least Dangerous Branch* (1962); Congress has pending before it a bill eliminating residency requirements for Presidential elections, but this would not help overcome residency obstacles with respect to state and local offices.

49. The Supreme Court has not confronted this issue, even though it has mandated one man, one vote for elections down to the local government level. See *Avery v. Midland County*, 390 U.S. 474 (1968).

50. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). As things now stand, it would seem that there must be proof of an intent to discriminate racially. And proof of the resulting discrimination is not sufficient or even presumptive as in the reapportionment cases. There must be evidence of intent to discriminate, and it is not altogether clear whether such evidence would be adequate if no improper classification such as race were involved. See *Wright v. Rockefeller*, 376 U.S. 52 (1964).

51. *Fortson v. Morris*, 385 U.S. 231 (1966).

52. *Sailors v. Bd. of Education*, 387 U.S. 105 (1967).

53. See S. Morrison, H. Commager, W. Leuchtenburg, *The Growth of the American Republic* (1969); R. Hofstadter, W. Miller, D. Aaron, *The United States* (1967); A. Craven, W. Johnson, *The United States, Experiment in Democracy* (1962).

54. M. Kraus, *The United States to 1865* 453 (1959).

55. The Supreme Court has refused to decide questions under the Republican Form of Government Clause on the ground that such claims present non-justiciable issues. Thus, when a suit was brought during Dorr's Rebellion in Rhode Island, the Court declined to decide which of the two vying governments was properly constituted. On this basis, not much help could be expected from the courts in resolving issues of legitimacy. *Luther v. Borden*, 7 How. 1 (1849).

56. Contrast the approach of America's nineteenth-century pioneers. Their attitudes toward the Indians reflected the doctrines of "manifest destiny" and "white man's burden"; there was no thought of peaceful accommodation, and the bloody, genocidal Indian wars were the result.

57. If there should be a political decision to alter the form of property law, or if the state should decide to eliminate private property, the Fourteenth Amendment, of course, would require compensation at fair market value. A ticklish problem arises, however, as to what this concept means in a state where the market has been declared non-existent. Clearly, property values will fall with the uncertainty associated with the new state government. Should the required compensation include losses because of the adverse impact of the political revolution? Or should the constitutional obligation be limited to the fair value at the time of purchase only? This type of problem is somewhat analogous to the problem of falling land values when rumor of impending government action leaks out, resulting in lower values, and then a lower price for compensation.

58. See A. Bickel, *The Supreme Court and the Idea of Progress* (1970).

59. In *Avery v. Midland County*, 390 U.S. 474 (1968), the Supreme Court extended its one man, one vote mandate to include local governments with general legislative powers. Justice Fortas' dissent reflects the fear that the Court's decision would impede creative experiments in local government.

60. *Gibbons v. Ogden*, 22 U.S. 1 (1824).

61. *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945).

62. *Pike v. Bruce Church*, 38 U.S. L. W. 4188 (U.S. March 3, 1970).

63. Compare *Maurer v. Hamilton*, 309 U.S. 598 (1940) and *Bradley v. Public Utilities Commission*, 289 U.S. 92 (1933) with *Castle v. Hayes Freight Lines*, 348 U.S. 61 (1954) and *Buck v. Kuykendall*, 267 U.S. 307 (1925). In a different context, see *Pennsylvania v. Nelson*, 350 U.S. 497 (1956); see generally Note, *Pre-emption as a Preferential Ground: A New Canon of Construction*, 12 Stan. L. Rev. 208 (1959).

64. Eg., *Heart of Atlanta Motel v. United States* 379 U.S. 241 (1964); *Katzenbach v. McClung*, 379 U.S. 294 (1964); *Wickard v. Filburn*, 317 U.S. 111 (1942).

65. For example, under the Federal Constitution, it is the obligation of the United States to guarantee to every state a Republican Form of Government, to protect each state against invasion, and upon application of the legislature or the executive (when the legislature cannot be convened) to protect each state from domestic violence. The Supreme Court has held that claims under this Guaranty Clause are not justiciable (cf. n. 55, *supra*); therefore, federal authorities could declare the Experimental State no longer Republican in form and suppress it by force. The new state might thus continually have the sword of Damocles—forceful federal intervention—hanging over its head, threatening to drop should the state's experimentation prove too radical or bothersome.

Another potential source of federal power might be section 5 of the Fourteenth Amendment. The proposed federal law mandating eighteen-year-old voting is an example of the expanded role that Congress might play in enforcing Fourteenth Amendment rights. The new view of section 5 as a justification of increased federal legislation comes from such cases as *United States v. Guest*, 383 U.S. 745 (1966), and *Katzenbach v. Morgan*, 384 U.S. 641 (1966). Professor Archibald Cox has discussed the concept fully in Cox, *Constitutional Adjudication and the Promotion of Human Rights*, 80 Harv. L. Rev. 91 (1966).

66. While the federal-state relationship is the most sensitive and potentially the most restrictive, the relationship with the other states also might cause problems. For example, the Constitution requires that each state give full faith and credit to the public acts, record and judicial proceedings of every other state. (U.S. Const., art. IV, § 1.) Also, the Constitution requires that a person who is charged with a crime in any state, if found in another state, be delivered up to the state having jurisdiction of the crime. (U.S. Const., art. IV, § 2.) Some may envision the Experimental State as a sanctuary for people whose acts elsewhere are asocial but which would not be crimes in the new state: specifically, drug users, charged in other states with violations of law. On strict legal grounds it is highly unlikely that the new state could serve such a sanctuary function because of federal jurisdiction inside the state. Practically, however, local sympathizers make criminal apprehension and prosecution difficult, especially if a trial is held where the veniemen drawn are from local pioneers. The history of unpunished white subjugation of blacks in the South offers an unfortunate example of local influence outside the formal legal structure. The hostility of New England to the Fugitive Slave Act of 1850 is a more appealing example of the same principle.

67. See generally Berman, *The Cuban Popular Tribunals*, 69 Colum. L. Rev. 1317 (1969); see also, K. Kalba, J. Beste, "Lawyers and Revolutionaries," in this issue of *Law & Social Action*.

68. M. Spiro, *Children of the Kibbutz* 3 (1958).

69. *Id.*, at 5.

70. E. Kanovsky, *The Economy of the Israeli Kibbutz* 139–40 (1966).

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